

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**GEORGIA-PACIFIC CONSUMER)
PRODUCTS LP,)
FORT JAMES CORPORATION, and)
GEORGIA-PACIFIC LLC)**

Plaintiffs,

v.

**NCR CORPORATION,)
INTERNATIONAL PAPER CO.,)
and WEYERHAEUSER CO.,)**

Defendants.

No: 1:11-cv-00483

Judge Robert J. Jonker

**Magistrate Judge
Hugh W. Brenneman, Jr.**

**PLAINTIFFS' REPLY TO NCR'S OPPOSITION TO MOTION TO COMPEL
PRODUCTION OF DOCUMENTS USED TO PREPARE CORPORATE DESIGNEE
AND RESUMPTION OF DEPOSITION OF DEFENDANT NCR CORPORATION**

NCR's opposition memorandum does not justify NCR's failure to prepare its 30(b)(6) designee, or its refusal to produce the documents that were the exclusive basis for his testimony. NCR cites no cases involving the preparation of a 30(b)(6) designee adequately explaining why NCR need not produce documents used to refresh the corporation's recollection, nor does it explain why any attorney work-product protection was not waived when NCR used the documents to prepare Mr. Gallagher. Tellingly, NCR cannot defend Mr. Gallagher's failure to speak to a single person, outside of litigation counsel, about the topics of NCR's 30(b)(6) deposition, when the information relevant to those topics resided almost exclusively in the memories of former employees available to NCR. Finally, although NCR argues that the noticed deposition topics were overly broad, it chose not to take the obvious recourse of seeking a protective order prior to appearing at the deposition, thereby waiving its right to complain now.

I. NCR Must Produce The 30(b)(6) Deposition Preparation Materials, For Which Any Attorney Work-Product Claim Has Been Waived.

Mr. Gallagher's lack of personal knowledge, and his complete reliance on documents to refresh NCR's recollection, require production of the materials he reviewed prior to NCR's 30(b)(6) deposition. Mr. Gallagher flatly admitted he was not "a percipient witness" regarding *any* of the topics set forth in GP's Rule 30(b)(6) deposition notice for NCR. Ex. A (NCR 30(b)(6) Tr.) at 9:21-10:3. Because Mr. Gallagher could not testify from "firsthand knowledge" during NCR's deposition (*id.*), he was "an 'empty vessel' and documents reviewed on these topics in preparation for the deposition *necessarily* informed his testimony," *Coryn Group II, LLC v. O.C. Seacrets*, 265 F.R.D. 235, 243 (D. Md. 2010) (emphasis added).

Mr. Gallagher testimony (or lack thereof) only compounded the problem of identifying the basis for his statements. He could not adequately respond to inquiries regarding specific documents used in his preparation, as he frequently could not recall what documents he

reviewed. *See* Ex. A at 52:14-20 (stating that he did not remember any “identifying details” of documents he reviewed in preparation for NCR’s testimony). He testified about the contents of documents that he also testified he did not recall reviewing. (*Compare id.* at 18:12-15 (stating that he wasn’t sure he reviewed Gene Edgerton’s deposition) *with* 134:4-8 (recalling Mr. Edgerton’s deposition testimony)). Accordingly, and as explained in GP’s opening memorandum and in the leading case (*Nutramax Labs., Inc. v. Twin Labs. Inc.*, 183 F.R.D. 458 (D. Md. 1988)), the only way GP can adequately cross-examine NCR is to see what documents Mr. Gallagher reviewed during his preparation. (Dkt. 130 at 4-7.)

NCR’s arguments concerning Rule 612 ignore the fact that the deposition was of NCR, not the “empty vessel” of Mr. Gallagher. Cases such as *Nutramax* and *Coryn Group II* are informative in that they deal with the complexities of attorney work-product claims over the *collection* of unprivileged documents used to prepare a Rule 30(b)(6) designee.¹ NCR, by contrast, relies on the inapposite *Parry v. Highlight Indus., Inc.*, which addresses the discoverability of an individual witness-preparation document that may itself contain privileged materials. 125 F.R.D. 449, 452 (W.D. Mich. 1989).² Similarly, one concern of *Parry* – the existence of improper “witness coaching” sufficient to justify disclosure of preparation materials – is present here, but in a completely different context. A party responding to a 30(b)(6) notice is *expected* to fill a witness’s head with information as needed. But this lawful “coaching” raises the same evidentiary concern as the improper coaching addressed in *Parry*, i.e., the process generates a need for the opposing party to have access to the preparation materials themselves.

¹ Mr. Gallagher testified that he reviewed no privileged or work-product protected documents during his deposition preparation. (Ex. A at 22:16-18.)

² Thus, *Parry* demands, for example, that the party claiming privilege must submit contested materials for *in camera* review – a process that is unnecessary here. *See Parry*, 125 F.R.D. at 452.

See id. (Court was concerned that witness had “been coached, through these documents, to avoid the use of certain terminology.”).

Moreover, to the extent NCR’s document-selection process could ever be protected by attorney work-product, that protection has been waived. Again, *Nutramax* is on point. *See* 183 F.R.D. at 467 (“If otherwise discoverable documents, which do not contain pure expressions of legal theories, mental impressions, conclusions or opinions of counsel, are assembled by counsel, and are put to a testimonial use in the litigation, then an implied limited waiver of the work-product doctrine takes place, and the documents themselves, not their broad subject matter, are discoverable.”). For Rule 30(b)(6) depositions, “[t]here is a greater need to know what materials were reviewed by expert designee witnesses in preparation for deposition since the substance of their testimony may be based on sources beyond personal knowledge.” *Id.* at 489.

II. NCR Failed To Adequately Prepare Its 30(b)(6) Designee, Particularly Because Mr. Gallagher Did Not Speak To Any Current Or Former NCR Employees About the Noticed Topics.

When preparing for its 30(b)(6) deposition, a corporation can conduct an “exhaustive investigation” for all information known or reasonably available to it, or it can bury its head in the sand.³ *See In re Indep. Serv. Org. Antitrust Litig.*, 168 F.R.D. 651, 654 (D. Kan. 1996). NCR chose the latter. Outside of litigation counsel, Mr. Gallagher spoke to *no one* prior to NCR’s deposition. (Ex. A at 13:16-20.)

Mr. Gallagher did not find any documents, or speak to anyone about CCP-containing trim produced at NCR’s “Systemedia” plant at Washington Court House, Ohio. (*Id.* at 71:3-14.) As

³ GP omitted a citation supporting its unremarkable assertion that NCR, like any entity responding to a 30(b)(6) notice, must “exhaustively” investigate all relevant information known or reasonably available to NCR. (*See* Dkt. No. 147 at 2 n.2.) NCR’s claim that it was “not aware of any” legal support for this statement is curious, given that NCR cites to the same page of the case from which GP obtained that standard. (*Id.* at 4 (citing *In re Indep. Serv. Org. Antitrust Litig.*, 168 F.R.D. at 654).)

just one example, he did not speak to Donald Clason, the former Senior Vice President of Systemedia, who claimed three weeks later in response to a GP subpoena that he recalled generation of trim in small volumes, all of which was incinerated on site. (Ex. B (Donald Clason Tr.) at 16:18-17:5, 40:14-16.) There is no doubt that Mr. Clason was readily available to NCR, since NCR's lawyers already represented him. Indeed, GP had previously located and reached out to Mr. Clason for information about Systemedia, only to be told that he was represented by NCR's counsel and was thus off-limits for informal discussion.

Similarly, Mr. Gallagher admitted reviewing a memorandum identifying former NCR employee Daniel McIntosh as someone knowledgeable about the generation and disposition of CCP waste paper, yet Mr. Gallagher did not speak with Mr. McIntosh prior to NCR's deposition. (Ex. A at 13:16-20.) Again, Mr. McIntosh was plainly available to NCR, and for the same reason – he was already represented by NCR's counsel. In fact, because of Mr. Gallagher's failure to prepare, *no one but NCR's counsel* has thus far been able to obtain Mr. McIntosh's information. GP had scheduled a deposition of Mr. McIntosh, but NCR's counsel canceled that deposition and thus far has refused to reschedule it.

Rule 30(b)(6) requires Mr. Gallagher, as NCR's representative, to reach out to people like Mr. Clason and Mr. McIntosh. GP should not be required to identify, locate, and depose every current and former NCR employee to determine who has knowledge of relevant topics.⁴ In short, NCR “cannot meet its discovery obligations by sticking its head in the sand and refusing to look for the answers and then saying it does not know the answer.” *In re Indep. Serv. Orgs. Antitrust Litig.*, 168 F.R.D. at 653.

⁴ This is particularly true with respect to Mr. Clason and Mr. McIntosh, as neither were listed in NCR's Initial Disclosures as individuals likely to have discoverable information.

III. NCR Waived The Right To Protest The Topics Of Its 30(b)(6) Deposition.

NCR's complaints about the propriety of GP's 30(b)(6) deposition notice come far too late. It is true that NCR sent written objections in response to GP's 30(b)(6) deposition notice, and that GP and NCR had subsequent discussions regarding NCR's concerns. Yet despite these alleged concerns, NCR decided not to seek a protective order, instead agreeing that it would "designate a witness who will provide testimony" on all the noticed topics. *See generally* Dkt. 130 Ex. C (NCR Corp.'s Responses and Objections to Pls.' Am. Notice of 30(b)(6) Dep). That decision spoke volumes about GP's noticed topics, which were in fact appropriately limited and plainly proper.

In any event, when NCR produced its witness, NCR's right to complain about the scope and content of the 30(b)(6) notice ended. Unlike objections to written discovery, objections to the scope or content of a 30(b)(6) deposition must be made *and resolved* in advance of the responsive testimony. *Compare* Fed. R. Civ. P. 33(b)(4), 34(b)(2)(C), 36(a)(5) *with* Fed. R. Civ. P. 30; *see also* *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 242 F.R.D. 164, 165-66 (D. Mass. 2007) ("If counsel for [defendant] was of the view that the plaintiff's 30(b)(6) deposition notice was defective or improper in some way...it was [defendant's] burden to seek protection pursuant to Rule 26(c), seeking an order that '...the...discovery may be had only on specified terms and conditions....'" (internal citations omitted); *see also* *In re Air Crash Disaster at Detroit Metro. Airport on August 16, 1987*, 130 F.R.D. 627 (E.D. Mich. 1989) ("Failure to seek judicial relief prior to [the date of the deposition] will preclude a later objection."). NCR's protestations of overbreadth ***after the deposition was taken*** are much like the plaintiff's complaints of a vague deposition notice in *Arctic Cat, Inc. v. Injection Research Specialists, Inc.*: "If, as Arctic Cat portends, the Deposition Notice caused it uncertainty as to the substance of the intended inquiry, Arctic Cat was prepared to ride that

uncertainty to a predictable conclusion -- the inability of its designated deponent to reasonably respond to relevant questioning.” 210 F.R.D. 680, 683 (D. Minn. 2002). NCR’s failure to seek a protective order before its deposition has waived any grounds for seeking judicial protection at this point.

IV. Conclusion: NCR Must Comply Or Live With Its Choices.

NCR claims it had concerns regarding the topics which GP noticed for its 30(b)(6) deposition, yet NCR decided to let the deposition continue as scheduled, apparently banking on its ability to complain after the fact. NCR’s designee, Mr. Gallagher, was admittedly an empty vessel whose testimony was based solely on business records he could only vaguely identify – yet NCR refuses to produce those records. Mr. Gallagher spoke to no one but litigation counsel prior to the deposition, even though those same attorneys represented former NCR employees with knowledge of various topics. Yet now NCR claims that its obligation to conduct an exhaustive investigation and provide testimony on behalf of the corporation has been satisfied.

NCR’s gamesmanship should not be rewarded. Either NCR must try again, or NCR must be bound by its choices. In addition to an award of its fees incurred in bringing this motion, GP respectfully requests that the Court (a) order NCR to produce, within 10 days, all documents used to prepare Mr. Gallagher for NCR’s 30(b)(6) deposition, and (b) order NCR to provide, within 20 days, a properly prepared witness for a resumption of the 30(b)(6) deposition at the offices of Hunton & Williams LLP in Washington, D.C. As set forth in GP’s opening memorandum, in the event NCR claims in an affidavit that it cannot provide further testimony on any of the noticed 30(b)(6) topics, GP requests that the Court take steps to ensure that NCR is held to its inability to present evidence, avoiding any ambush at trial.

Dated: March 2, 2012

**GEORGIA-PACIFIC CONSUMER
PRODUCTS, LP., FORT JAMES
CORPORATION, and GEORGIA-PACIFIC
LLC**

BY: /s/ Douglas M. Garrou

Peter A. Smit, Bar No. P 27886
Varnum LLP
Bridgewater Place, P.O. Box 352
Grand Rapids, MI 49501
(616) 336-6000

Joseph C. Kearfott
Douglas M. Garrou
George P. Sibley, III
Hunton & Williams LLP
951 East Byrd St.
Richmond, VA 23219
(804) 788-8200

Jeffrey N. Martin
Djordje Petkoski
Hunton & Williams LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 955-1500

Kathy Robb
Hunton & Williams LLP
200 Park Avenue, 52nd Floor
New York, New York 10166-0005
(212) 309-1000

Jan M. Conlin
Tara D. Falsani
Robins, Kaplan, Miller & Ciresi L.L.P.
800 LaSalle Avenue
2800 LaSalle Plaza
Minneapolis, MN 55402
(612) 349-8500

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

-----*
GEORGIA PACIFIC CONSUMER PRODUCTS,
FORT JAMES CORPORATION, and
GEORGE-PACIFIC LLC, Civil Action No.

Plaintiffs, 1:11-cv-00483-RJJ

vs.

NCR CORPORATION, INTERNATIONAL
PAPER CO., and WEYERHAEUSER
COMPANY,

Defendants.
-----*

VIDEOTAPED 30(B)(6) DEPOSITION OF

NCR, by and through its designee,

EDWARD R. GALLAGHER

Wednesday, January 25, 2012

New York, New York

10:21 a.m.

Reported by:

Josephine H. Fassett, RPR, CCR

30(b)(6) NCR (Gallagher, Edward R.)

January 25, 2012

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<p style="text-align: right;">2</p> <p>1 Wednesday, January 25, 2012</p> <p>2 New York, New York</p> <p>3 10:21 a.m.</p> <p>4</p> <p>5 T R A N S C R I P T of the Videotaped</p> <p>6 30(b)(6) Deposition of NCR, by and through its</p> <p>7 designee, EDWARD R. GALLAGHER, taken by the</p> <p>8 Plaintiffs, held at the offices of Cravath, Swaine</p> <p>9 & Moore LLP, 825 Eighth Avenue, New York, New York,</p> <p>10 on Wednesday, January 25, 2012, commencing at 10:21</p> <p>11 a.m., before Josephine H. Fassett, a Registered</p> <p>12 Professional Reporter, Certified Court Reporter,</p> <p>13 Certified Livenote Reporter and Notary Public of the</p> <p>14 State of New York.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">4</p> <p>1 A P P E A R A N C E S (cont'd) :</p> <p>2</p> <p>3 BAKER HOSTETLER LLP</p> <p>4 Attorneys for Defendant International Paper Co.</p> <p>5 PNC Center</p> <p>6 1900 East 9th Street</p> <p>7 Suite 3200</p> <p>8 Cleveland, Ohio 44114-3482</p> <p>9 BY: JOHN D. PARKER, ESQ.</p> <p>10 jparker@bakerlaw.com</p> <p>11</p> <p>12</p> <p>13 PERKINS COIE LLP</p> <p>14 Attorneys for Defendant Weyerhaeuser Company</p> <p>15 1201 Third Avenue</p> <p>16 Suite 4800</p> <p>17 Seattle, Washington 98101-3099</p> <p>18 BY: J. CHRISTOPHER BAIRD, ESQ.</p> <p>19 jcbaird@perkinscoie.com</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 MARCELO RIVERA, Videographer</p>
<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S :</p> <p>2</p> <p>3 HUNTON & WILLIAMS LLP</p> <p>4 Attorneys for Plaintiffs</p> <p>5 Riverfront Plaza</p> <p>6 East Tower</p> <p>7 951 East Byrd Street</p> <p>8 Richmond, Virginia 23219</p> <p>9 BY: DOUGLAS M. GARROU, ESQ.</p> <p>10 dgarrou@hunton.com</p> <p>11 JOSEPH C. KEARFOTT, ESQ.</p> <p>12 jkearfott@hunton.com</p> <p>13</p> <p>14</p> <p>15 CRAVATH, SWAINE & MOORE LLP</p> <p>16 Attorneys for Defendant NCR Corporation</p> <p>17 825 Eighth Avenue</p> <p>18 New York, New York 10019-7475</p> <p>19 BY: DARIN P. McATEE, ESQ.</p> <p>20 dmcatee@cravath.com</p> <p>21</p> <p>22</p>	<p style="text-align: right;">5</p> <p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 EDWARD R. GALLAGHER</p> <p>4 By Mr. Garrou 8,191</p> <p>5 By Mr. Parker 186</p> <p>6</p> <p>7 AFTERNOON SESSION - 99</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10 EXHIBIT DESCRIPTION PAGE</p> <p>11 Exhibit 49 Plaintiffs' Amended Notice of</p> <p>12 30(b)(6) Deposition of NCR</p> <p>13 Corporation and Request for</p> <p>14 Production of Documents 7</p> <p>15 Exhibit 50 Impact Paper Report dated</p> <p>16 August 31, 1953 28</p> <p>17 Exhibit 51 The NCR News Article dated</p> <p>18 May 1954 33</p> <p>19 Exhibit 52 NCR Factory News Article dated</p> <p>20 December 1958 36</p> <p>21 Exhibit 53 NCR Factory News Article dated</p> <p>22 March 1967 39</p>

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30(b)(6) NCR (Gallagher, Edward R.)

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<p style="text-align: right;">6</p> <p>1 E X H I B I T S</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Exhibit 54 NCR Factory News Article dated</p> <p>4 February 1966 41</p> <p>5 Exhibit 55 NCR Factory News Article dated</p> <p>6 June 1964 48</p> <p>7 Exhibit 56 Memorandum dated January 23, 1970 52</p> <p>8 Exhibit 57 NCR World Article dated</p> <p>9 November-December 1970 63</p> <p>10 Exhibit 58 NCR World Article dated</p> <p>11 January-February 1971 97</p> <p>12 Exhibit 59 Compilation of Attachments to</p> <p>13 30(b)(6) Deposition Notice 101</p> <p>14 Exhibit 60 International Paper's Notice of</p> <p>15 Rule 30(b)(6) Deposition of</p> <p>16 Defendant NCR Corporation 186</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">8</p> <p>1 525, Washington, D.C.</p> <p>2 Will present counsel please introduce</p> <p>3 themselves for the record.</p> <p>4 MR. GARROU: Doug Garrou representing</p> <p>5 Plaintiffs.</p> <p>6 MR. KEARFOTT: Joseph Kearfott with</p> <p>7 Hunton & Williams representing the</p> <p>8 Plaintiffs.</p> <p>9 MR. PARKER: John Parker with Baker &</p> <p>10 Hostetler representing International Paper.</p> <p>11 MR. BAIRD: Chris Baird from Perkins</p> <p>12 Coie for Weyerhaeuser.</p> <p>13 MR. McATEE: Darin McAtee from Cravath</p> <p>14 for NCR.</p> <p>15 THE VIDEOGRAPHER: Will the court</p> <p>16 reporter please swear in the witness.</p> <p>17 E D W A R D R . G A L L A G H E R , the witness,</p> <p>18 having been duly sworn, was examined and</p> <p>19 testified under oath as follows:</p> <p>20 EXAMINATION BY</p> <p>21 MR. GARROU:</p> <p>22 Q Good morning, Mr. Gallagher.</p>
<p style="text-align: right;">7</p> <p>1 (Plaintiffs' Amended Notice of 30(b)(6)</p> <p>2 Deposition of NCR Corporation and Request for</p> <p>3 Production of Documents premarked as Exhibit</p> <p>4 49, as of this date.)</p> <p>5 (Whereupon, on the video record.)</p> <p>6 THE VIDEOGRAPHER: This is DVD No. 1 of</p> <p>7 the video deposition of Mr. Ed Gallagher in</p> <p>8 the matter Georgia-Pacific Consumer Products,</p> <p>9 et al. versus NCR Corporation, International</p> <p>10 Paper Company, et al., in the United States</p> <p>11 District Court for the Western District of</p> <p>12 Michigan, Southern Division.</p> <p>13 This deposition is being held at the law</p> <p>14 offices of Cravath, Swaine & Moore, located</p> <p>15 at 825 Eighth Avenue, New York, New York, on</p> <p>16 January 25th, 2012, at approximately 10:21</p> <p>17 a.m.</p> <p>18 My name is Marcelo Rivera from the firm</p> <p>19 of Henderson Legal Services.</p> <p>20 The court reporter is Josephine Fassett</p> <p>21 in association with Henderson Legal Services,</p> <p>22 located at 1015 15th Street, Northwest, Suite</p>	<p style="text-align: right;">9</p> <p>1 A Good morning.</p> <p>2 Q Could you please state your full name</p> <p>3 and employment position?</p> <p>4 A Edward Ray Gallagher. I'm a law vice</p> <p>5 president at NCR Corporation.</p> <p>6 Q And when you're not testifying as a</p> <p>7 30(b)(6) witness, what do your job duties consist</p> <p>8 of?</p> <p>9 A I manage our litigation and employment</p> <p>10 law group.</p> <p>11 Q Okay. Have you brought any documents</p> <p>12 with you in connection with your testimony today?</p> <p>13 A I have not.</p> <p>14 Q All right. I'd like to have you take a</p> <p>15 look at what I've marked as Exhibit 49.</p> <p>16 Do you recognize that as the Notice of</p> <p>17 30(b)(6) Deposition that you're testifying in</p> <p>18 response to today?</p> <p>19 A (Reviews.)</p> <p>20 Yes, I do.</p> <p>21 Q Okay. When you first reviewed that</p> <p>22 notice, did you have firsthand knowledge of any of</p>

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<p style="text-align: right;">10</p> <p>1 the topics that are set forth in that notice?</p> <p>2 A Well, certainly not in the sense of</p> <p>3 being a percipient witness, no.</p> <p>4 Q All right.</p> <p>5 A I did -- no, I guess not.</p> <p>6 Q I'm sorry, I didn't hear that last part.</p> <p>7 A No, I did not.</p> <p>8 Q Okay. And, are you designated to</p> <p>9 testify on all of the specifications listed in</p> <p>10 that Exhibit 49?</p> <p>11 A I am.</p> <p>12 Q So it's fair to say that your testimony</p> <p>13 on those topics will be based on documents that</p> <p>14 you've reviewed and/or people you've talked to,</p> <p>15 correct?</p> <p>16 A Yes, that's correct.</p> <p>17 Q All right. And so you didn't review any</p> <p>18 documents that ever refreshed your firsthand</p> <p>19 recollection of any matters that are set forth in</p> <p>20 the, in the notice; did you?</p> <p>21 A Would you repeat that, please?</p> <p>22 MR. GARROU: Can I have that read back,</p>	<p style="text-align: right;">12</p> <p>1 preparing for your deposition today?</p> <p>2 A John Hartje and Jennifer Daniels.</p> <p>3 Q Could you spell Mr. Hartje's last name?</p> <p>4 A H-a-r-t-j-e.</p> <p>5 Q And Daniels is D-a-n-i-e-l-s?</p> <p>6 A Correct.</p> <p>7 Q And what topics did you discuss with</p> <p>8 Mr. Hartje?</p> <p>9 A Only who would be an appropriate witness</p> <p>10 to respond to the notice.</p> <p>11 Q All right. What topics did you discuss</p> <p>12 with Ms. Daniels in connection with your</p> <p>13 testimony?</p> <p>14 A The same.</p> <p>15 Q And the conclusion was that you would be</p> <p>16 the appropriate witness, I take it?</p> <p>17 A I'm certainly the ultimate conclusion.</p> <p>18 Q All right. Did you --</p> <p>19 THE WITNESS: Can we take a short -- I</p> <p>20 want to get some water.</p> <p>21 MR. GARROU: Sure.</p> <p>22 THE WITNESS: If I could take a quick</p>
<p style="text-align: right;">11</p> <p>1 please.</p> <p>2 (Whereupon, the requested portion was</p> <p>3 read back by the Reporter:</p> <p>4 "Question: And so you didn't review any</p> <p>5 documents that ever refreshed your firsthand</p> <p>6 recollection of any matters that are set</p> <p>7 forth in the notice; did you?")</p> <p>8 A No, I did not.</p> <p>9 Q All right. How did you prepare for your</p> <p>10 deposition today?</p> <p>11 A I had some conversations, initially with</p> <p>12 counsel and with colleagues at NCR.</p> <p>13 I reviewed several documents, met with</p> <p>14 counsel, and inquired of counsel as to the topics</p> <p>15 on at least a couple of occasions. Probably spent</p> <p>16 about 50 hours on it.</p> <p>17 Q All right. And when did you start that</p> <p>18 process?</p> <p>19 A I believe in December, but most was in</p> <p>20 January.</p> <p>21 Q All right. Which of your colleagues at</p> <p>22 NCR did you speak with in connection with</p>	<p style="text-align: right;">13</p> <p>1 break.</p> <p>2 MR. GARROU: Sure.</p> <p>3 MR. McATEE: I'll get you some.</p> <p>4 THE WITNESS: Thanks.</p> <p>5 BY MR. GARROU:</p> <p>6 Q In preparation for your testimony today,</p> <p>7 did you have any discussions with former NCR</p> <p>8 employees?</p> <p>9 A I did not.</p> <p>10 Q Same question with respect to the former</p> <p>11 employees of Appleton Papers, Incorporated. Did</p> <p>12 you have any contact with them in connection with</p> <p>13 preparing for your deposition?</p> <p>14 A No.</p> <p>15 Q Maybe the easiest way to do this is:</p> <p>16 Other than the two people that you</p> <p>17 mentioned, Mr. Hartje and Ms. Daniels, did you</p> <p>18 have any conversations with anyone other than</p> <p>19 counsel in preparation for your deposition today?</p> <p>20 A I don't recall that I did.</p> <p>21 Q All right.</p> <p>22 A It's possible that our environmental</p>

30(b)(6) NCR (Gallagher, Edward R.)

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6 (Pages 18 to 21)

<p style="text-align: right;">18</p> <p>1 depositions -- well, strike that.</p> <p>2 Is the Martin deposition that you</p> <p>3 referred to the deposition of Leon Martin taken in</p> <p>4 this case?</p> <p>5 A Sounds correct.</p> <p>6 Q All right. A former employee at the</p> <p>7 Kalamazoo mill?</p> <p>8 A I believe that's right.</p> <p>9 Q Did you review a deposition of</p> <p>10 Mr. Lacey, L-a-c-e-y?</p> <p>11 A I think that I did.</p> <p>12 Q How about a Mr. Edgerton? Did you</p> <p>13 review a deposition in this case by Gene Edgerton?</p> <p>14 A I know the name, I'm not sure that I</p> <p>15 reviewed the testimony.</p> <p>16 Q The same question with respect to George</p> <p>17 Hunter. Did you read a deposition by Mr. George</p> <p>18 Hunter taken in this case?</p> <p>19 A I don't recall that name.</p> <p>20 Q All right. You mentioned that you</p> <p>21 reviewed newsletters. What newsletters did you</p> <p>22 review?</p>	<p style="text-align: right;">20</p> <p>1 submissions from NCR at some point in time?</p> <p>2 A The documents I understand were produced</p> <p>3 either in the 104(e) or in this litigation.</p> <p>4 Possibly in the Fox River litigation.</p> <p>5 Q All right. You mentioned progress</p> <p>6 reports. What progress reports did you review?</p> <p>7 A I think it was the title given to these</p> <p>8 reports that came from the Portage, Wisconsin</p> <p>9 plant.</p> <p>10 Q That's NCR's Portage, Wisconsin plant?</p> <p>11 A It was, yes.</p> <p>12 Q And what internal memoranda do you</p> <p>13 recall reviewing?</p> <p>14 A There were several. There were reports</p> <p>15 of research activity. And others. I don't really</p> <p>16 have specific recollections of them.</p> <p>17 Q All right. Did you review any resources</p> <p>18 from the Internet?</p> <p>19 A I did not.</p> <p>20 Q Did you review any governmental or</p> <p>21 regulator reports?</p> <p>22 A No, no, I didn't.</p>
<p style="text-align: right;">19</p> <p>1 A They were internal Appleton or NCR</p> <p>2 newsletters. They, I believe, were in the 104(e)</p> <p>3 production.</p> <p>4 Q Did those include, or, among those</p> <p>5 materials, were there any NCR Factory News</p> <p>6 publications?</p> <p>7 A I don't recall seeing that title.</p> <p>8 Q All right. What titles do you recall</p> <p>9 seeing, if any?</p> <p>10 A There might have been something called</p> <p>11 Appleton Scene, I'm not certain.</p> <p>12 Q I think you got that right.</p> <p>13 Anything else you recall?</p> <p>14 A I think I did see other newsletters, but</p> <p>15 I don't recall titles.</p> <p>16 Q All right. What financial records did</p> <p>17 you review?</p> <p>18 A I remember some Appleton financial</p> <p>19 reports for, I think 1969.</p> <p>20 Q Did you review any documents in</p> <p>21 preparation for your testimony today, other than</p> <p>22 depositions, that were not part of the 104(e)</p>	<p style="text-align: right;">21</p> <p>1 Q Did you review any documents in the form</p> <p>2 of electronic images as opposed to paper</p> <p>3 documents?</p> <p>4 A I did not.</p> <p>5 Q Did you review any summaries or other</p> <p>6 accounts of witness interviews?</p> <p>7 A I think the only thing was a summary</p> <p>8 attached to one of the expert witness reports, or</p> <p>9 at least that came from an expert witness and was</p> <p>10 produced.</p> <p>11 Q And what expert witness report was that?</p> <p>12 A Again, I'm not certain it was the</p> <p>13 report, but it -- I think Mr. Moore, but I'm not</p> <p>14 certain.</p> <p>15 Q And do you know whether the report that</p> <p>16 you read was something that was produced in the</p> <p>17 Fox litigation?</p> <p>18 A I believe that it was.</p> <p>19 Q And by "produced," to be more clear, I</p> <p>20 mean disclosed to the other side.</p> <p>21 A That's what I meant.</p> <p>22 Q Okay. Did you review any investigators'</p>

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7 (Pages 22 to 25)

<p style="text-align: right;">22</p> <p>1 reports?</p> <p>2 A No.</p> <p>3 Q Did you review any newspaper articles?</p> <p>4 A I don't think so. I don't know if any</p> <p>5 happened to be included in the old materials, I</p> <p>6 don't remember any specifically.</p> <p>7 Q All right. I take it, it would not be</p> <p>8 possible for you to tell me precisely which</p> <p>9 documents you looked at in preparation for this</p> <p>10 deposition as you sit here, correct?</p> <p>11 A I could tell you some, but I certainly</p> <p>12 couldn't tell you all of them.</p> <p>13 Q All right. Did you review any summaries</p> <p>14 of documents provided to you by counsel?</p> <p>15 A No.</p> <p>16 Q Did you review any documents that were</p> <p>17 marked privileged or work product?</p> <p>18 A I did not.</p> <p>19 Q Have you completed your review in</p> <p>20 preparation for your deposition today?</p> <p>21 A Yes, I have.</p> <p>22 Q And do you feel that you were given</p>	<p style="text-align: right;">24</p> <p>1 facilities.</p> <p>2 Q All right. So the reference to</p> <p>3 Mr. Stutz's testimony you think referred to a</p> <p>4 research rather, which would be, I guess, Topic 7,</p> <p>5 not Topic 6; is that correct?</p> <p>6 A It would probably fit 7 better than 6.</p> <p>7 Q All right. I'll save it for 7 then.</p> <p>8 What business activities did NCR engage</p> <p>9 in in Dayton, Ohio, that made use of</p> <p>10 PCB-containing CCP?</p> <p>11 MR. McATEE: Could I have that back?</p> <p>12 (Whereupon, the requested portion was</p> <p>13 read back by the Reporter:</p> <p>14 "Question: What business activities did</p> <p>15 NCR engage in in Dayton, Ohio, that made use</p> <p>16 of PCB-containing CCP?")</p> <p>17 (Whereupon, discussion off the audio</p> <p>18 record.)</p> <p>19 MR. McATEE: So, Doug, I don't think</p> <p>20 that's one of the topics he's being put up</p> <p>21 for today.</p> <p>22 BY MR. GARROU:</p>
<p style="text-align: right;">23</p> <p>1 adequate time to do so?</p> <p>2 A I do.</p> <p>3 Q All right. I'd like to move to the --</p> <p>4 some of the specifications in the notice.</p> <p>5 And I'd like to start first with</p> <p>6 Specification No. 6.</p> <p>7 What did you review to prepare yourself</p> <p>8 to testify on Specification No. 6?</p> <p>9 MR. McATEE: Let him read 6.</p> <p>10 MR. GARROU: Sure.</p> <p>11 MR. McATEE: Since you threw me for a</p> <p>12 loop, because I thought you'd start with 1.</p> <p>13 MR. GARROU: Tricky Richmond lawyer.</p> <p>14 A (Reads.)</p> <p>15 With respect to Specification 6, there</p> <p>16 were relatively few documents in the record that</p> <p>17 related to this. There was, Mr. Stutz had made</p> <p>18 some remarks in his deposition. Although this,</p> <p>19 that was in connection with his research work.</p> <p>20 And I don't believe, while we're still looking at</p> <p>21 the matter, I don't think we found anything as to</p> <p>22 general recycling at the Dayton headquarters or</p>	<p style="text-align: right;">25</p> <p>1 Q You can go ahead.</p> <p>2 A I took this to refer to use in offices</p> <p>3 and recycling of that material. And the extent to</p> <p>4 which it was used in offices we haven't found to</p> <p>5 this point any indications. That's, that's how I</p> <p>6 understood the question.</p> <p>7 Q All right. I take it you're not able to</p> <p>8 answer any of the subparts of Topic 6, in light of</p> <p>9 what you've just said; is that correct?</p> <p>10 A That's correct.</p> <p>11 Q Are you familiar with NCR's printing</p> <p>12 division?</p> <p>13 A Well, there isn't one today. And I</p> <p>14 don't recall there was something, an entity or a</p> <p>15 division by that name in the past.</p> <p>16 Q All right. So you've never undertaken</p> <p>17 any investigation regarding the activities and</p> <p>18 paper handling practices of NCR's printing</p> <p>19 division in Dayton?</p> <p>20 A I'm familiar with other businesses that</p> <p>21 worked with paper, but, you know, don't recall the</p> <p>22 name printer division.</p>

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14 (Pages 50 to 53)

<p style="text-align: right;">50</p> <p>1 Q All right. Where have you looked for</p> <p>2 those materials?</p> <p>3 A In the documents that have been</p> <p>4 generated. I did review this document before the</p> <p>5 deposition. And -- and -- not personally but</p> <p>6 through interviews of former employees.</p> <p>7 Q All right. Is NCR aware of any former</p> <p>8 employees who were involved in coating operations</p> <p>9 in Dayton, Ohio?</p> <p>10 MR. McATEE: Who were involved in that?</p> <p>11 MR. GARROU: Yes, sir.</p> <p>12 A There's certainly memoranda that talk</p> <p>13 about some of the tests and that's -- and the</p> <p>14 research work. I don't recall their names. But</p> <p>15 that may be what's referred to here.</p> <p>16 Q Have you completed your answer?</p> <p>17 A Oh, yes, I have.</p> <p>18 Q Sorry.</p> <p>19 What was the disposition of the</p> <p>20 documents associated with the Research Division</p> <p>21 Pilot Plant in Dayton?</p> <p>22 A I'm not aware of that disposition.</p>	<p style="text-align: right;">52</p> <p>1 And there are references to materials being sent</p> <p>2 to Appleton, Dayton, Mead, or being held at a</p> <p>3 customer location. But there's a reference to a</p> <p>4 small warehouse of an indeterminate location in</p> <p>5 one memo.</p> <p>6 Q Do you know anything about that</p> <p>7 warehouse?</p> <p>8 A I don't.</p> <p>9 Q What investigation did you undertake in</p> <p>10 preparation for testifying on Specification 8?</p> <p>11 A It's primarily a review of documents in</p> <p>12 the record that indicated the sorts of things I</p> <p>13 was just mentioning.</p> <p>14 Q All right. Are you able to identify</p> <p>15 those documents with any more specificity than you</p> <p>16 just did?</p> <p>17 A There was a memo from a Mr. McClenahan</p> <p>18 that referenced some of that. Others appear in</p> <p>19 several different documents, and I can't recall</p> <p>20 their identifying details now.</p> <p>21 (Memorandum dated January 23, 1970</p> <p>22 marked as Exhibit 56, as of this date.)</p>
<p style="text-align: right;">51</p> <p>1 Q All right. Do you know whether the</p> <p>2 Research Division Pilot Plant still exists in</p> <p>3 Dayton?</p> <p>4 A It does not.</p> <p>5 Q Do you know when it would have been</p> <p>6 deactivated?</p> <p>7 A No, I don't.</p> <p>8 Q All right.</p> <p>9 All right. Moving to Specification No.</p> <p>10 8 in Exhibit 49.</p> <p>11 A (Complies.)</p> <p>12 Q With respect to any operation that</p> <p>13 produced carbonless copy paper for NCR in Dayton</p> <p>14 or otherwise, are you aware of the manufacture of</p> <p>15 any finished CCP that was not ultimately sold to a</p> <p>16 customer?</p> <p>17 A I've seen references in some of the</p> <p>18 documents about customer complaints. And to</p> <p>19 subsequent testing.</p> <p>20 Q Do you recall which documents those are?</p> <p>21 A Several of the research reports or</p> <p>22 activity reports reference customer complaints.</p>	<p style="text-align: right;">53</p> <p>1 BY MR. GARROU:</p> <p>2 Q I'm going to hand you what I think may</p> <p>3 be that document marked as Exhibit 56. Could you</p> <p>4 take a look at that for me?</p> <p>5 A (Reviews.)</p> <p>6 Q Is this the memo from Mr. McClenahan you</p> <p>7 were referring to earlier?</p> <p>8 A Yes, it is.</p> <p>9 Q All right. The -- the person being</p> <p>10 described here, Daniel McIntosh, Section Manager</p> <p>11 NCR Technical Services, do you know who that is?</p> <p>12 A Only by name.</p> <p>13 Q All right. Do you know whether that</p> <p>14 was, in fact, his title as of January 1970?</p> <p>15 A I don't have a reason to doubt it.</p> <p>16 Q Do you know whether NCR's lawyers</p> <p>17 represent Mr. McIntosh?</p> <p>18 A I don't know.</p> <p>19 Q Did you ever ask to be put in touch with</p> <p>20 Mr. McIntosh in preparation, as a part of</p> <p>21 preparation for your deposition today?</p> <p>22 A I understand he's very ill and so I did</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 generated there.</p> <p>2 Q All right. When was that? And by</p> <p>3 "broke" do you mean PCB-containing CCP broke?</p> <p>4 A I do.</p> <p>5 Q All right. When was that PCB-containing</p> <p>6 CCP broke generated at the Washington Court House</p> <p>7 facility?</p> <p>8 A I believe in this 1960s, perhaps other</p> <p>9 times.</p> <p>10 Q All right. What's that belief based on?</p> <p>11 A From the inquiries I made prior to the</p> <p>12 dep or in preparation for the deposition.</p> <p>13 Q All right. And did you -- did those</p> <p>14 inquiries include speaking with any people?</p> <p>15 A Not outside of counsel.</p> <p>16 Q All right. Aside from counsel, did you</p> <p>17 obtain any information from any person that led</p> <p>18 you to believe that there was some CCP broke and</p> <p>19 trim containing PCBs generated at Washington Court</p> <p>20 House in the 1960s?</p> <p>21 THE WITNESS: I'm sorry, I lost that.</p> <p>22 MR. GARROU: Let me ask that one over.</p>	<p style="text-align: right;">72</p> <p>1 your questions.</p> <p>2 BY MR. GARROU:</p> <p>3 Q Well, am I correct that your only</p> <p>4 information regarding the generation of</p> <p>5 PCB-containing broke at Washington Court House</p> <p>6 came to you in connection with discussion with</p> <p>7 counsel?</p> <p>8 MR. McATEE: Object to form.</p> <p>9 A I don't recall any others.</p> <p>10 Q All right. What did you learn from</p> <p>11 counsel regarding the creation of PCB-containing</p> <p>12 broke and trim at Washington Court House?</p> <p>13 A I wanted to know if there had been some,</p> <p>14 and I understood that there was, and I don't --</p> <p>15 well, that's -- that was my main purpose.</p> <p>16 Q All right. So aside from being told</p> <p>17 that by counsel, are you aware of any facts</p> <p>18 supporting your belief that PCB-containing CCP</p> <p>19 broke and trim was generated at Washington Court</p> <p>20 House?</p> <p>21 A No, I don't recall any specific facts.</p> <p>22 Q What led you to believe that it was</p>
<p style="text-align: right;">71</p> <p>1 That was terrible.</p> <p>2 BY MR. GARROU:</p> <p>3 Q Aside from speaking with counsel, did</p> <p>4 anyone else provide you with facts leading you to</p> <p>5 believe that in the 1960s, and perhaps other</p> <p>6 times, the Washington Court House operation</p> <p>7 generated PCB-containing CCP broke?</p> <p>8 A I can't recall any other communications.</p> <p>9 Q All right. How about documents? Did</p> <p>10 you review any documents leading you to believe</p> <p>11 that that broke was generated in the 1960s and</p> <p>12 perhaps other times?</p> <p>13 A I don't think we've located any</p> <p>14 documents to that effect.</p> <p>15 Q All right. Do you know what facts</p> <p>16 formed the basis for your counsel's discussion</p> <p>17 with you regarding the creation of PCB-containing</p> <p>18 CCP broke at Washington Court House?</p> <p>19 MR. McATEE: Object to form.</p> <p>20 Can you just ask that without counsel in</p> <p>21 the question? He's here to talk as a</p> <p>22 representative of the company in answering</p>	<p style="text-align: right;">73</p> <p>1 generated in the 1960s and possibly other times?</p> <p>2 A I don't think -- it wouldn't have come</p> <p>3 after 1970, '71 when we stopped doing CCP broke,</p> <p>4 or stopped using Aroclor 1242. And the reason for</p> <p>5 other times, I don't recall how long the facility</p> <p>6 had been in use.</p> <p>7 From the reference in Exhibit 57, it's</p> <p>8 highly likely it was in place in 1970 and</p> <p>9 therefore I'm presuming it was doing work in the</p> <p>10 sixties.</p> <p>11 Q You said that you wouldn't expect it to</p> <p>12 have been generated after 1970 or 1971 due to the</p> <p>13 fact that NCR stopped using Aroclor 1242. Is that</p> <p>14 an accurate summary of what you said?</p> <p>15 A That's correct.</p> <p>16 Q All right. When, in fact, did NCR stop</p> <p>17 using Aroclor 1242?</p> <p>18 A I don't recall the exact date, it was in</p> <p>19 '70 or '71.</p> <p>20 Q Okay. You can't narrow it down any</p> <p>21 further than that?</p> <p>22 A I could, but not as I sit here today.</p>

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35 (Pages 134 to 137)

<p style="text-align: right;">134</p> <p>1 Q Are you familiar with the term</p> <p>2 backhauling?</p> <p>3 A I am.</p> <p>4 Q Are you familiar with any evidence</p> <p>5 suggesting that carbonless broke was backhauled by</p> <p>6 truck from the Appleton plant?</p> <p>7 A I think Mr. Edgerton may have suggested</p> <p>8 that.</p> <p>9 Q Do you have any reason to think he's</p> <p>10 incorrect about that?</p> <p>11 A It's not consistent with the testimony</p> <p>12 of the people that actually handled the broke</p> <p>13 sales.</p> <p>14 Q All right. So NCR doesn't believe that</p> <p>15 any carbonless broke was backhauled from the</p> <p>16 Appleton plant between 1953 and 1971?</p> <p>17 A That's right.</p> <p>18 Q The brokers that you've identified as</p> <p>19 being the ones that NCR believes purchased</p> <p>20 carbonless broke from Appleton, those brokers</p> <p>21 being National Fiber, Continental and Golper, is</p> <p>22 that the same collection of brokers that NCR</p>	<p style="text-align: right;">136</p> <p>1 A I have seen nothing to that effect.</p> <p>2 Q All right.</p> <p>3 A Nor heard of it.</p> <p>4 Q During what time period did the Combined</p> <p>5 Locks Mill create PCB-containing carbonless broke?</p> <p>6 A It did some trial runs in the</p> <p>7 mid-sixties, as I recall, and then resumed in the</p> <p>8 late-sixties. In -- not resumed, it commenced</p> <p>9 some regular production in the late-sixties.</p> <p>10 Q All right. Have you been able to</p> <p>11 estimate for any year the amount of PCB-containing</p> <p>12 carbonless broke that would have been generated by</p> <p>13 the Combined Locks Mill?</p> <p>14 A No. The -- you'd have to do some of the</p> <p>15 same inferences based on shipment of emulsion from</p> <p>16 Portage, much as we had discussed several minutes</p> <p>17 ago with respect to Appleton, both for volume and</p> <p>18 PCB quantities.</p> <p>19 Q All right. And -- and have you</p> <p>20 conducted those estimates?</p> <p>21 A No. I have not tried to create the</p> <p>22 experiment for that or the -- identify the</p>
<p style="text-align: right;">135</p> <p>1 believes obtained PCB-containing carbonless broke</p> <p>2 from Combined Locks?</p> <p>3 A We believe so.</p> <p>4 Q All right. So would your answers with</p> <p>5 respect to carbonless broke leaving the Appleton</p> <p>6 plant and what brokers it went to and how it was</p> <p>7 transported, would those answers all be the same</p> <p>8 for the Combined Locks plant?</p> <p>9 A Yes.</p> <p>10 Q All right. So you believe that the</p> <p>11 Combined Locks plant -- strike that.</p> <p>12 You believe that any PCB-containing</p> <p>13 carbonless broke from the Combined Locks plant</p> <p>14 would have been transported away from that</p> <p>15 facility by rail?</p> <p>16 A Yes.</p> <p>17 Q And you don't believe any would have</p> <p>18 been transported by truck?</p> <p>19 A We've seen nothing to suggest that.</p> <p>20 Q All right. And you don't believe any</p> <p>21 would have been transported by truck to</p> <p>22 Mr. Golper's facility in particular?</p>	<p style="text-align: right;">137</p> <p>1 assumptions you'd have to make.</p> <p>2 Q Does NCR have any idea of the volume,</p> <p>3 annual or otherwise, of PCB-containing CCP broke</p> <p>4 that was generated at the Combined Locks Mill?</p> <p>5 A At this point, not beyond what I just</p> <p>6 mentioned. We may engage an expert to do that.</p> <p>7 Q All right. With respect to</p> <p>8 PCB-containing carbonless broke from either the</p> <p>9 Appleton plant or from the Combined Locks Mill,</p> <p>10 does NCR have any knowledge with respect to where</p> <p>11 that broke ended up?</p> <p>12 A Again, based on the testimony of the</p> <p>13 individuals from the Purchasing Department, they</p> <p>14 indicated they were aware or had become aware that</p> <p>15 it was going to the mills in the Fox River.</p> <p>16 Although that was not true for any particular</p> <p>17 shipment because the brokers tended to guard their</p> <p>18 business and their customer identities carefully.</p> <p>19 Q All right. What portion does NCR</p> <p>20 believe -- strike that.</p> <p>21 With respect to carbonless -- strike</p> <p>22 that.</p>

EXHIBIT B

Clason, Donald

February 17, 2012

1

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GEORGIA-PACIFIC CONSUMER
PRODUCTS LP, FORT JAMES
CORPORATION, and
GEORGIA-PACIFIC, LLC,
Plaintiffs,

Case No.: 1:11-cv-00483
Judge Robert J. Jonker

vs.
NCR CORPORATION,
INTERNATIONAL PAPER CO.,
and WEYERHAEUSER CO.,

Defendants.

VIDEOTAPED DEPOSITION OF DONALD CLASON

TAKEN BY: Plaintiffs Herein

DATE: Friday, February 17, 2012

TIME: 8:34 a.m. - 10:54 a.m.

PLACE: Sarasota Meeting Center
2042 Bee Ridge Road
Sarasota, Florida

REPORTED BY: Linda C. Mead, CCR, CSR
Notary Public, State of Florida

Henderson Legal Services, Inc.

202-220-4158

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Clason, Donald

February 17, 2012

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<p style="text-align: right;">2</p> <p>1 APPEARANCES:</p> <p>2 GEORGE P. SIBLEY, III, ESQUIRE</p> <p>3 Hunton & Williams, LLP</p> <p>4 951 East Byrd Street</p> <p>5 Richmond, Virginia 23219</p> <p>6 Appearing on behalf of Plaintiffs</p> <p>7</p> <p>8 DAVID R. MARRIOT, ESQUIRE</p> <p>9 OWEN J.M. ROTH, ESQUIRE</p> <p>10 Cravath, Swaine & Moore, LLP</p> <p>11 Worldwide Plaza</p> <p>12 825 Eighth Avenue</p> <p>13 New York, New York 10019</p> <p>14 Appearing on behalf of Defendant</p> <p>15 NCR Corporation</p> <p>16</p> <p>17 J. CHRISTOPHER BAIRD, ESQUIRE</p> <p>18 Perkins Coie, LLP</p> <p>19 1201 Third Avenue</p> <p>20 Suite 4800</p> <p>21 Seattle, Washington 98101</p> <p>22 Appearing on behalf of Defendant</p> <p>Weyerhaeuser Company</p>	<p style="text-align: right;">4</p> <p>1 DEPOSITION OF: Donald Clason</p> <p>2</p> <p>3 Examination</p> <p>4</p> <p>5 Page</p> <p>6 By Mr. Sibley..... 6</p> <p>7 By Mr. Marriot..... 80</p> <p>8 By Mr. Sibley..... 82</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 Description Page</p> <p>12 Exhibit 63 1966 Telephone Directory..... 18</p> <p>13 Exhibit 64 1971 Telephone Directory..... 27</p> <p>14 Exhibit 65 1971 Organization Charts..... 32</p> <p>15 Exhibit 66 Consolidated Statements Ending</p> <p>16 5/31/72..... 43</p> <p>17 Exhibit 67 Open House Announcement..... 50</p> <p>18 Exhibit 68 Letter/Financial Statements 12/18/72..61</p> <p>19 Exhibit 69 Letter to Anderson 11/21/72..... 65</p> <p>20 Exhibit 70 Letter to Katz 7/14/00..... 68</p> <p>21 Exhibit 71 Letter to Katz 8/21/00..... 72</p> <p>22</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MICHAEL D. MEUTI, ESQUIRE</p> <p>4 Baker Hostetler</p> <p>5 PNC Center</p> <p>6 1900 East 9th Street</p> <p>7 Suite 3200</p> <p>8 Cleveland, Ohio 44114</p> <p>9 Appearing on behalf of Defendant</p> <p>10 International Paper Company</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 *****</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning. My name</p> <p>5 is Rick Spector, Videographer for Henderson</p> <p>6 Legal Services. This matter is before the</p> <p>7 United States District Court for the Western</p> <p>8 District of Michigan, Southern Division.</p> <p>9 This is the matter of Georgia Pacific</p> <p>10 Consumer Products, LP, Fort James Corporation</p> <p>11 and Georgia-Pacific, LLC as Plaintiffs versus</p> <p>12 NCR Corporation, International Paper Company</p> <p>13 and Weyerhaeuser Company as Defendants. The</p> <p>14 Case Number is 1:11-cv-000483 before Judge</p> <p>15 Robert J. Jonker.</p> <p>16 Today is Friday, February 17th, 2012.</p> <p>17 It's 8:33 in the morning. This is the</p> <p>18 deposition of Donald Clason.</p> <p>19 At this time I'll ask the attorneys to</p> <p>20 please introduce themselves.</p> <p>21 MR. SIBLEY: Trey Sibley from Hunton &</p> <p>22 Williams for Georgia-Pacific and the</p>

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<p style="text-align: right;">14</p> <p>1 Q Okay. With respect to carbonless paper,</p> <p>2 where -- where did NCR get its carbonless paper?</p> <p>3 A Where did --</p> <p>4 Q Who was the supplier?</p> <p>5 A At what point in time are you talking</p> <p>6 about?</p> <p>7 Q I'm talking about when you were in Los</p> <p>8 Angeles.</p> <p>9 A When I was in Los Angeles it was Business</p> <p>10 Systems, Incorporated first and we bought some of</p> <p>11 it -- most of it actually came from Mead.</p> <p>12 MR. MARRIOT: Just to be clear, are we</p> <p>13 talking about the period from '60 to '64 before</p> <p>14 NCR or '64 --</p> <p>15 BY MR. SIBLEY:</p> <p>16 Q If it's the -- Was it the same operation</p> <p>17 all six years just a change in ownership in 1964?</p> <p>18 A It was -- Yeah. It was the same people,</p> <p>19 the same everything. Nothing changed really except</p> <p>20 the ownership as far as NCR from about '60 to '66.</p> <p>21 Q And how did that paper come to the --</p> <p>22 those facilities in Los Angeles? Did it come in big</p>	<p style="text-align: right;">16</p> <p>1 Q I'm talking about all paper.</p> <p>2 A All paper.</p> <p>3 Q In the course of making business forms.</p> <p>4 A Well, scrap -- Ask the question again now.</p> <p>5 Q The scrap paper that would be generated in</p> <p>6 the process of making business forms, what did you</p> <p>7 call that?</p> <p>8 A Well, it called in two categories. One</p> <p>9 was -- One was scrap or waste and the other was</p> <p>10 trim.</p> <p>11 Q What was the difference between the two?</p> <p>12 A Waste basically -- mostly involved</p> <p>13 wrappers or just the beginning of a roll or the end</p> <p>14 of a roll.</p> <p>15 Q And trim was everything else?</p> <p>16 A Yes. Trim was the smaller portion because</p> <p>17 we tried to buy it to size.</p> <p>18 Q Okay. And during this period when you</p> <p>19 were a controller, what was -- what did Business</p> <p>20 Systems or later NCR do with that trim as it was</p> <p>21 generated?</p> <p>22 A There were two sides to it because you're</p>
<p style="text-align: right;">15</p> <p>1 rolls?</p> <p>2 A Yeah. It came in rolls or in some cases</p> <p>3 in sheets. We had both sheet-fed and roll-fed</p> <p>4 presses.</p> <p>5 Q And at your facility the forms would be</p> <p>6 cut down to size and printed?</p> <p>7 A Yes.</p> <p>8 Q And in the course of that process there</p> <p>9 would be scrap paper generated, correct?</p> <p>10 A Yes.</p> <p>11 Q And during the -- that time period, what</p> <p>12 would you have referred -- how would you have</p> <p>13 described that paper? What term would you have</p> <p>14 used?</p> <p>15 A What paper?</p> <p>16 Q The scrap paper.</p> <p>17 A The scrap.</p> <p>18 MR. MARRIOT: I'm sorry. I just want to</p> <p>19 make sure we're clear about whether we're now</p> <p>20 talking about the carbonless copy paper or any</p> <p>21 other paper that was there.</p> <p>22 BY MR. SIBLEY:</p>	<p style="text-align: right;">17</p> <p>1 talking about carbonless. Carbonless we did nothing</p> <p>2 with basically. The other trim and waste was sold</p> <p>3 as scrap, but carbonless couldn't be sold as scrap</p> <p>4 so we typically burned it. There was very little of</p> <p>5 it back in those days.</p> <p>6 Q Back in those days.</p> <p>7 The carbonless paper that was used during</p> <p>8 this period, that would have been what's known as</p> <p>9 NCR paper, correct?</p> <p>10 A Yes.</p> <p>11 Q And you're aware now that that paper</p> <p>12 contained as part of the emulsion that coated it a</p> <p>13 chemical -- a set of chemicals known as</p> <p>14 polychlorinated biphenyl or PCBs?</p> <p>15 A I've heard that term, but I'm not in the</p> <p>16 paper business so I don't know much about it to tell</p> <p>17 you the truth.</p> <p>18 Q Okay. The -- Was there a point in time</p> <p>19 when you came to learn that NCR paper of this</p> <p>20 vintage used PCBs as part of the technology that</p> <p>21 made it work?</p> <p>22 A Not particularly. I didn't get into the</p>

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<p style="text-align: right;">38</p> <p>1 certainly less than one percent.</p> <p>2 Q Less than one percent?</p> <p>3 A Yes.</p> <p>4 Q Okay. And did -- during that time period,</p> <p>5 did NCR keep track of how much it was losing as</p> <p>6 trim, converter trim?</p> <p>7 A Not between -- not separating between</p> <p>8 them. We kept track of waste and trim, yes, but not</p> <p>9 separating out carbonless and bond and carbon and</p> <p>10 carbon paper and all that. It was not separated.</p> <p>11 Q With respect to other types of paper, you</p> <p>12 mentioned bonded and carbon. Let's deal with all</p> <p>13 paper used to create forms at Washington Court House</p> <p>14 during this time period. As a percentage how much</p> <p>15 trim would have been generated?</p> <p>16 A I would be guessing to be really precise</p> <p>17 40 years ago, but certainly less than one percent.</p> <p>18 Q Combined for all paper?</p> <p>19 A Yes.</p> <p>20 Q Less than one percent?</p> <p>21 A Sure.</p> <p>22 Q How many tons -- Let me try it this way:</p>	<p style="text-align: right;">40</p> <p>1 A Yes.</p> <p>2 Q What sort of brokers -- Which brokers did</p> <p>3 NCR use, if you know, to buy other types of paper</p> <p>4 other than carbonless?</p> <p>5 A I don't know names. It was a very, very</p> <p>6 small activity. Very small.</p> <p>7 Q Are you familiar with a company called the</p> <p>8 Montgomery Paper Company?</p> <p>9 A No.</p> <p>10 Q What about National Fiber Supply?</p> <p>11 A No.</p> <p>12 Q What about Continental Paper Grading?</p> <p>13 A No.</p> <p>14 Q So what did NCR do with the trim, the</p> <p>15 carbonless trim?</p> <p>16 A For the most part they burned it.</p> <p>17 Q And where did they burn it?</p> <p>18 A Well, they had boilers at the time.</p> <p>19 Q So there would have been some sort of</p> <p>20 incinerator on site?</p> <p>21 A Yeah, back in those days. Again, we're</p> <p>22 talking about '64. It was very, very small. I</p>
<p style="text-align: right;">39</p> <p>1 Did you keep track of how many -- how much -- how</p> <p>2 many tons per week of paper came into that -- or to</p> <p>3 any printing facility?</p> <p>4 A Sure.</p> <p>5 Q Do you recall with respect to Washington</p> <p>6 Court House how many tons per week paper came into</p> <p>7 the facility?</p> <p>8 A No.</p> <p>9 Q And let's talk about -- continue to talk</p> <p>10 about converter trim. During this time period would</p> <p>11 NCR have sold converter trim to waste paper brokers?</p> <p>12 A If you're talking about carbonless paper,</p> <p>13 no.</p> <p>14 Q Okay. NCR did not?</p> <p>15 A We couldn't sell carbonless paper, the</p> <p>16 trim. Brokers wouldn't buy it.</p> <p>17 Q But they would buy other trim?</p> <p>18 A Yes.</p> <p>19 Q Did -- Did NCR segregate the paper?</p> <p>20 A Yes.</p> <p>21 Q Okay. And is this at all of -- all of</p> <p>22 NCR's facilities?</p>	<p style="text-align: right;">41</p> <p>1 mean, it really wasn't very much at all. Most of</p> <p>2 the forms we made were bond and carbon, they were</p> <p>3 not carbonless.</p> <p>4 Q This -- Most of the forms you made were</p> <p>5 bonded carbon you said?</p> <p>6 A Bond and carbon.</p> <p>7 Q Bond and carbon.</p> <p>8 A Again, we're talking back in the '60s.</p> <p>9 Q Did -- But NCR did use carbonless copy --</p> <p>10 did create carbonless forms, correct?</p> <p>11 A Sure.</p> <p>12 Q During this time period, right?</p> <p>13 A Yes.</p> <p>14 Q And as a percentage -- Do you know sitting</p> <p>15 here today as a percentage how much carbonless was</p> <p>16 used in comparison to the other types of paper at</p> <p>17 Washington Court House?</p> <p>18 A No. I wouldn't know that.</p> <p>19 Q Now, when NCR sold business forms to</p> <p>20 customers, were there times when customers rejected</p> <p>21 the delivery because -- for one reason or another?</p> <p>22 A I can't think of any frankly.</p>